

The opinion in support of the decision being entered today
is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte BLYTH S. BIGGS

Appeal 2007-2865
Application 10/654,779
Technology Center 3600

Decided: September 27, 2007

Before TONI R. SCHEINER, LORA M. GREEN, and RICHARD M.
LEBOVITZ, *Administrative Patent Judges*.

SCHEINER, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 involving claims to an ergonomic utility tool handle. The Examiner has rejected the claims as anticipated. We have jurisdiction under 35 U.S.C. § 6(b). We reverse the anticipation rejection, and enter a new ground of rejection under the provisions of 37 C.F.R. § 41.50(b).

BACKGROUND

The present invention is directed to an ergonomic utility handle “which can be utilized equally effectively by right or left handed persons” (Spec. 5), and which “reduce[s] the fatigue and repetitive motion injuries and the undue strain . . . involved with raking and hoeing and numerous other activities” (*id.* at 4-5).

DISCUSSION

Claims 1-4 are pending,¹ and read as follows:

1. A utility tool handle comprising: a first straight segment covered by a first hand grip; a first curved segment depending from said first straight segment; a second straight segment depending from said first curved segment; a second curved segment depending from said second straight segment; a third straight segment depending from said second curved segment; a second hand grip carried by said third straight segment; a third curved segment depending from said third straight segment; a fourth straight segment depending from said third curved segment; and utility tool attachment means carried by said fourth straight segment.

2. The utility tool handle of claim 1 wherein the first hand grip is shaped to conform to individual fingers.

¹ We note the statement “Applicant herewith withdraws Claim 2 and 3 from the Appeal, leaving Claims 1 and 4, the only pending claims” (Appeal Br. 1). However, we can find no instructions canceling Claims 2 and 3 in the record, so they appear to be in pending status. Normally, when claims are withdrawn from appeal (as opposed to being canceled), the appeal is simply dismissed with respect to those claims, and the Examiner’s rejection stands. In the present case, however, we are reversing the Examiner’s rejection and entering a new ground of rejection under the provisions of 37 C.F.R. § 41.50(b). In the interests of completeness, we will apply the new ground of rejection to claims 2 and 3, as well as 1 and 4. Of course, Appellant would still have the opportunity to cancel those claims, if so desired.

3. The utility tool handle of claim 1 wherein the utility tool attachment means includes a telescoping relationship to the fourth straight segment.

4. A utility tool handle for working the ground with an implement carried by the handle comprising: two elongate straight hand grips and an elongate implement attachment connected by curved segments in such a manner that a person having a left hand and arm and a right hand and arm can exert maximum downward pressure on the implement through either the left or right hand and arm while exerting maximum backward pulling pressure through the other hand and arm.

ANTICIPATION

The Examiner rejected claims 1-4 under 35 U.S.C. § 102(b) as anticipated by Blessing² (Answer 3).

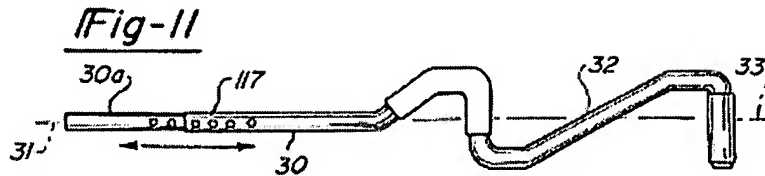
Referring to Figure 11 of Blessing, the Examiner contends that Blessing discloses a hand tool comprising

a first straight segment covered by a first hand grip (26); a first curved segment depending from the first straight segment; a second straight segment (32) depending from the first curved segment; a second curved segment (U-shaped bend) depending from the second straight segment; a third straight segment depending from the second curved segment; a second hand grip (22) carried by the third straight segment; a third curved segment (inverted U-shaped bend) depending from the third straight segment; a fourth straight segment (30) depending from the third curved segment; and utility tool attachment means (30a) carried by the fourth straight segment.

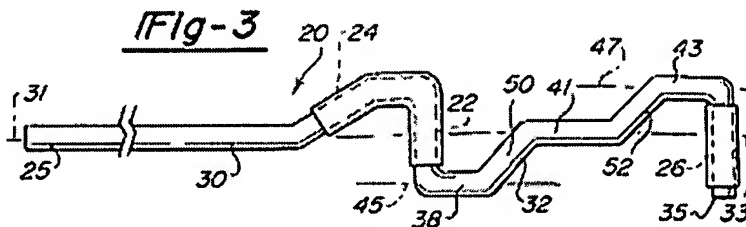
(Answer 3-4).

² U.S. Patent 6,199,245 B1 to Blessing, issued March 13, 2001.

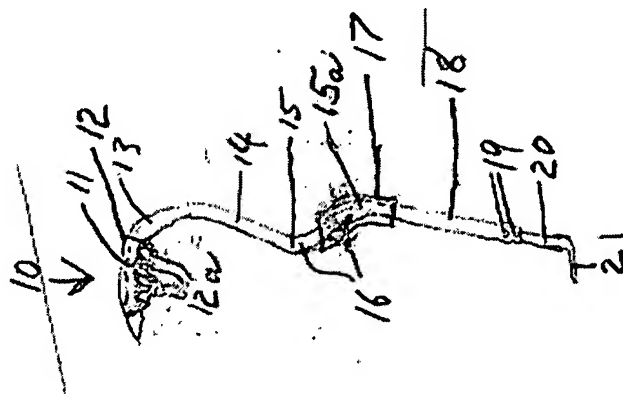
Blessing's Figure 11 is reproduced below:



The various grips, which are not numbered in Figure 11, are numbered in Blessing's Figure 3, a somewhat different embodiment, but with the same grips, in the same orientation to each other. Blessing's Figure 3 is reproduced below:



Appellant's Figure 1 represents an embodiment of the instant invention that meets the limitations of the claims. Appellant's Figure 1 is reproduced below, rotated through 90° for ease of comparison.



For a reference to anticipate a claim “[e]very element of the claimed invention must be literally present, arranged as in the claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989).

Appellant contends that “the Examiner interprets the two . . . ‘U’ shaped [bends] [as] ‘curved segments’ (Appeal Br. 4), but “these cannot be considered curves” (*id.* at 5). According to Appellant, “Blessing, in all of the variations, comprises a lengthy series of straight segments” (*id.*).

We agree with the Examiner that the overall configuration of the tool handle shown in Figure 11 of Blessing is the same overall configuration as the embodiment of the claimed invention shown in Appellant’s Figure 1. However, we find that each U-shaped portion of Blessing’s handle, rather than being a true curve without straight stretches or angularity, comprises a series of bends or angles that connect straight segments which *approximate* a curve. Therefore, we find that Blessing does not describe every element of the claims, arranged as required by the claims.

Accordingly, the rejection of claims 1-4 under 35 U.S.C. § 102(b) is reversed.

NEW GROUND OF REJECTION - OBVIOUSNESS

While we have reversed the rejection of the claims as anticipated by Blessing, that is not to say that Blessing is not relevant to the patentability of the claims. Under the provisions of 37 C.F.R. § 41.50(b), we enter the following new ground of rejection:

Claims 1-4 are rejected under 35 U.S.C. § 103(a) as unpatentable over Blessing.

Blessing describes an ergonomic utility tool handle which “reduces user fatigue and increases the force transferred through the handle to [an] implement [attached to the handle] . . . the handle distributes the forces occurring during use on the flats of the palm and fingers and directly to the muscles in the arm as opposed to the wrist and gripping muscles” (Blessing, col. 2, ll. 14-19). Blessing’s device “includes two portions; an elongated shaft portion and a handle portion. The handle portion includes at least one hand hold or grip portion positioned perpendicular or at a slight angle to a longitudinal axis or center line of the shaft portion” (*id.* at col. 1, ll. 49-53). In a preferred embodiment,

the handle section includes three grip portions. Two of the grip portions extend perpendicular to the longitudinal axis of the shaft portion. The third grip portion extends outward at an angle from the longitudinal axis of the shaft portion. The third grip portion allows the user to position one hand at an angle to the longitudinal axis of the shaft portion while the other hand is positioned perpendicular to the longitudinal axis of the shaft portion. Grasping the handle in this position, i.e., placing the user’s hands where indicated, enables the user to transmit increased energy to the implement while minimizing nonproductive or wasted energy in the form of friction or gripping force.

Blessing, col. 1, ll. 54-65.

As discussed above, Blessing’s tool handle (Figure 11) has the same overall configuration as the claimed tool handle. That is, Blessing’s rear grip **26**³ (covering handle segment **33**) is equivalent to Appellant’s first

³ The grip is numbered 26 in Figure 3.

straight segment covered by a first hand grip; Blessing's elongated straight segment **32** is equivalent to the second straight segment of the claimed handle; Blessing's front grip **24**⁴ (carried on a short, straight segment) is equivalent to Appellant's third straight segment carrying a second hand grip; and Blessing's telescoping segment **30, 30a** is equivalent to Appellant's fourth straight segment. The only difference between Blessing's and Appellant's handles is that Blessing uses a series of angled short, straight segments (or U-bends), approximating curves, instead of Appellant's first, second, and third curved segments, to connect the equivalent segments **26, 32, 24, and 30**.

With respect to claim 4, which requires "two elongate straight hand grips and an elongate implement attachment connected by curved segments in such a manner that a person . . . can exert maximum downward pressure on the implement through either the left or right hand and arm while exerting maximum backward pulling pressure through the other hand and arm[,]" Blessing teaches that the "ergonomical handle **20** [is] designed to [allow the user to] directly apply pulling power to the implement without having to increase the grip force of the user" (*id.* at col. 3, ll. 62-64). In addition,

the rearward grip portion **26** is disposed at the upper end **35** of the handle **20** and the front grip portion **24** is closest to the shaft portion **30**. The middle grip portion **22** is positioned between the rear grip portion **26** and the front grip portion **24**" (Blessing, col. 3, ll. 41-47). "[U]se of the various grip portions **22, 24, 26** enables the user [] to vary his or her hand positions on the handle **20** in the most ergonomical fashion" (*id.* at Col. 4, ll. 21-23). For example, "[u]se of the front grip portion **24** allows

⁴ The front grip is numbered 24 in Figure 3.

the user [] to apply a downward force on the handle 20 [with the right hand], while the force exerted by the user's [] left hand [] on the rear grip portion 26 to move the handle remains in line with the first longitudinal axis 33. The user's left hand 37 remains perpendicular to the first longitudinal axis 33"

Blessing, col. 3, l. 64 to col. 4, l. 4.

Recently addressing the issue of obviousness, the United States Supreme Court reaffirmed that it is obvious to choose from among known equivalents:

When there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense. In that instance the fact that a combination was obvious to try might show that it was obvious under § 103.

KSR Int'l v. Teleflex Inc., 127 S. Ct. 1727, 1742 (2007).

We conclude that it would have been obvious for one of ordinary skill in the art to have used curves, instead of a series of Blessing's short angled segments approximating curves, to connect Blessing's elongated shaft portion 32 and elongated handle portion 30 - one of ordinary skill in the art would have recognized that either approach would result in the same overall configuration, with the same distribution of forces.

SUMMARY

We reverse the Examiner's rejection of claims 1-4 under 35 U.S.C. § 102(b) as anticipated by Blessing.

We enter a new ground of rejection of claims 1-4 under 35 U.S.C. § 103, as being unpatentable over Blessing.

TIME PERIOD FOR RESPONSE

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b) (effective September 13, 2004, 69 Fed. Reg. 49960 (August 12, 2004), 1286 Off. Gaz. Pat. Office 21 (September 7, 2004)). 37 C.F.R. § 41.50(b) provides “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.

37 C.F.R. § 41.50(b) also provides that the Appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(1) *Reopen prosecution*. Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the Examiner, in which event the proceeding will be remanded to the Examiner . . .

(2) *Request rehearing*. Request that the proceeding be reheard under § 41.52 by the Board upon the same record

REVERSED; 37 C.F.R. § 41.50(b)

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